IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 626 of 1996

Between:

K.SUBBARAMI REDDY, S/O.ADINARAYANA REDDY,
R/O.SULLUR, SULLURPETA MANDAL,
NELLORE DIST.

..... PETITIONER

AND

1 The Dist. Collector
Nellore Dist.
2 The M.R.O., Sullurepet (M),
Sullerpet Nellore Dist.
3 The Mandal Inspector
Sulurepet Nellore Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction preferably in the writ of Mandamus are any other writ order declaring the action of the respondent in initiating the second enquiry under the A.P.Occupants of Homesteads Act, 1976 vide the proceedings D.Dis No.5918/91 dt: 19/2/91 in pursuance of the order dt: 24/11/92 issued by the 1st respondent as illegal and arbitrary and unconstitutionality direct the respondent not take any action under the said act in respect of the petitioner land Sy.No.70/2 Patta No.162 at Sullur, Sullurpet (M), Nellore District

Counsel for the Petitioner: MR.R.V.MALLIKARJUNA RAO

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE

The Court made the following:

ORDER

This writ petition is filed seeking writ of mandamus to declare the action of the respondents in initiating the second enquiry under the provisions of A.P. Occupants of Homesteads (Conferment of ownership) Act, 1976 (for short 'the Act') vide proceedings D.Dis.No.5918/91, dated 19.02.1992 in pursuance of the order dated 24.11.1992, as illegal and arbitrary.

It is stated in the affidavit filed in support of the writ petition that the petitioner is owner of the land in Survey No.70/2 admeasuring Ac.1.04 cents covered by patta No.162 at Sullur Village and Mandal of Nellore District, and he has no other land except this piece of land and he has no source of income. Some third parties have occupied the said land and on their applications, earlier an enquiry was initiated as contemplated under Sec.4 (3) of the Act. As per the provisions of the said Act, Tahsildar, presently the Mandal Revenue Officer is authorized officer to examine the issue for grant of ownership certificate. Pursuant to the enquiry conducted in October, 1988, a final report was submitted by the Mandal Revenue Officer on 19.12.1990 by proceedings No.RC.A.4780/88, wherein it is stated that the occupations are subsequent to the enactment of the Act and the occupants are not entitled for ownership certificates as per the provisions of the Act. The said report has become final and no orders have been passed. Subsequently it appears that by an ex parte order dated 19.02.2002, further enquiry was ordered and notices were issued to conduct the enquiry.

It is the case of the petitioner that as an enquiry was conducted earlier and a report was submitted, no directions can be given by the Collector, particularly by passing ex parte order to hold another enquiry. It is also the case of the petitioner that no valid reason for ordering second enquiry was shown, inasmuch as earlier enquiry was already conducted and a report was submitted by the competent authority as

per provisions of the Act.

Counter affidavit filed on behalf of respondents, wherein it is stated that pursuant to the enquiry, the Mandal Revenue Officer has submitted his report, and thereafter the Sub Collector, Gudur recommended to accord permission to the Mandal Revenue Officer to initiate action under the provisions of the Land Acquisition Act. At the same time, it is stated that the second enquiry is being started only pursuant to the directions issued by the Joint Collector.

As per the provisions of the Act, the authorized officer is Mandal Revenue Officer, the appellate authority is the Revenue Divisional Officer and the Revisional authority is the Collector. From the report already filed, it is clear that an enquiry was already conducted and it was found that the occupants are not entitled for ownership certificates as per the provisions of the said Act as they were not in possession as on the date of commencement of the Act. When the said report has become final and the aggrieved person has not filed any appeal before the appellate authority, no further enquiry can be conducted, particularly in view of the ex parte instructions given by the Joint Collector. Even as per the averments of the counter affidavit, no reason is forth coming for holding such a second enquiry.

In that view of the matter, initiating second enquiry for the very same purpose has to be declared as illegal. The respondents are directed not to make further enquiry for the reason that the first enquiry was conducted and completed by an authorized officer. If the land is required for any public purpose, it is open for the respondents to acquire the same land by following due procedure under the provisions of Land Acquisition Act.

Subject to the above directions, as indicated above, the Writ Petition is allowed. No order as to costs.

Dated: 25.02.2005

Dsr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Friday, Twenty fifth day of February, Two thousand and five.

ASSISTANT REGISTRAR

To:

1 The District Collector
Nellore Dist.
2 The M.R.O., Sullurepet (M),
Sullerpet Nellore Dist.
3 The Mandal Inspector
Sulurepet Nellore Dist.

4. Two CCs to the Government Pleader

for Revenue, High Court Buildings,

Hyderabad (OUT)

5. Two CD copies

*Form-NIC-OGS/WP{**KMR**}*